

APR 17 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DARNELL McGARY,

Plaintiff - Appellant,

v.

JUDGE RONALD CULPEPPER; et al.,

Defendants - Appellees.

No. 05-35904

D.C. No. CV-05-05376-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted April 13, 2006**

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Washington state civil detainee Darnell McGary appeals pro se from the district court's order denying him leave to file his civil rights complaint in forma pauperis. We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

discretion a denial of leave to proceed in forma pauperis, *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990), and we affirm.

The district court did not abuse its discretion in denying McGary leave to file in forma pauperis because McGary failed to demonstrate that he was unable to pay court costs and provide for his basic needs. *Cf. Rowland v. California Men's Colony*, 506 U.S. 194, 203 (1993) (stating an affidavit is sufficient where it shows affiant cannot meet court costs and still be able to provide himself and dependents with the necessities of life).

AFFIRMED.